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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,192	12/22/2005	Yoshiyuki Ikeda	579510-610012	4114
28104	7550	10/05/2009		
JONES DAY 77 WEST WACKER CHICAGO, IL 60601-1692			EXAMINER SUTTON, ANDREW W	
			ART UNIT	PAPER NUMBER
			3765	
			MAIL DATE	DELIVERY MODE
			10/05/2009 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/562,192

**Applicant(s)**

IKEDA, YOSHIYUKI

**Examiner**

ANDREW W. SUTTON

**Art Unit**

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 71-99 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 71-99 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S5108)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 3/13/06

## **DETAILED ACTION**

### ***Specification***

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 71-99 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant claims the foam is tested by a Fajour method with the method not being defined, therefore deeming the claim indefinite.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 71-99 are rejected, to the degree definite, under 35 U.S.C. 103(a) as being unpatentable over Perlinger (US 5,095,550). Perlinger teaches a helmet neck

cover comprising a flexible cover member and a to-be-attached portion 26 with the flexible cover member comprising a foam plate material 34 and a flexible support member 10. The foam of Perlinger would inherently have permeability. With respect to the limitation of a .1-10 cc/cm<sup>2</sup> (.2-5 cc/cm<sup>2</sup> or .3-2 cc/cm<sup>2</sup>) permeability, the specification contains no disclosure of either the critical nature of the claimed permeability or any unexpected results arising therefrom, and that as such the .1-10 cc/cm<sup>2</sup> (.2-5 cc/cm<sup>2</sup> or .3-2 cc/cm<sup>2</sup>) was arbitrary and therefore obvious. Such permeability limitation cannot be a basis for patentability, since where patentability is said to be based upon diameter or another permeability or another variable in the claim, the applicant must show that the .1-10 cc/cm<sup>2</sup> (.2-5 cc/cm<sup>2</sup> or .3-2 cc/cm<sup>2</sup>) is critical. In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934 (Fed. Cir. 1990). One having ordinary skill in the art would be able to determine through routine experimentation the ideal dimension for a particular application.

As to claim 72, Perlinger teaches the flexible support member being made of a sheet material and covers the cushion portion 34 like a bag.

As to claim 73, Perlinger sheets the sheet material can be leather.

As to claim 76, Perlinger teaches the foam material that would inherently have a density. With respect to the limitation of a 30-60 kg/cm<sup>3</sup> density, the specification contains no disclosure of either the critical nature of the claimed density or any unexpected results arising therefrom, and that as such the 30-60 kg/cm<sup>3</sup> density was arbitrary and therefore obvious. Such density limitation cannot be a basis for patentability, since where patentability is said to be based upon diameter or another

density or another variable in the claim, the applicant must show that the 30-60 kg/cm<sup>3</sup> density is critical. In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934 (Fed. Cir. 1990). One having ordinary skill in the art would be able to determine through routine experimentation the ideal dimension for a particular application.

As to claim 77, 85, 91, Perlinger teaches the use of foam as claimed. Perlinger does not specifically teach the use of urethane foam. It would have been obvious to one of ordinary skill in the art to modify the device of Perlinger with that of urethane foam as it is commonly used in the helmet art.

As to claim 78, Perlinger teaches the portion being made of foam.

As to claim 79, the to-be-attached portion 26 made of plastic and therefore elastic. The portion 26 also serves to hold the shape of the flexible cover member.

As to claim 80, flexible cover member has an annular shape with a missing portion corresponding to the head of a wearer.

As to claim 81, the missing portion comprises an intermittent portion so that left and right ends 25f are present.

As to claim 86, Perlinger teaches the device substantially above. Perlinger illustrates in Fig. 2 a second portion of the to be attached portion that serves to hold the shape of the second flexible cover, the second to be attached portion would be placed between the shell and outer surface of the backing member 78 as shown in Fig. 5. Perlinger teaches a second flexible support member 78.

As to claim 88, Perlinger teaches the device substantially above. Perlinger further teaches a chin cover 20 to be attached near the head of the wearer. The chin

cover includes a flexible main body 20 and a to-be-attached portion 22a. In an attached stated the chin cover and neck cover would overlap on both the right and left sides of the chin portion but not in the center.

As to claim 87, Perlinger teaches the flexible member covering the opening. With respect to the limitation of a 48-74%, the specification contains no disclosure of either the critical nature of the claimed percentage or any unexpected results arising therefrom, and that as such the 48-74% was arbitrary and therefore obvious. Such percentage limitation cannot be a basis for patentability, since where patentability is said to be based upon diameter or another percentage or another variable in the claim, the applicant must show that the 48-74% is critical. In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934 (Fed. Cir. 1990). One having ordinary skill in the art would be able to determine through routine experimentation the ideal dimension for a particular application.

As to claim 92, Perlinger teaches the second flexible cover being made of nylon which would be in the form of a fabric (mesh cloth)

As to claim 93, the missing portion comprises an intermittent portion.

As to claim 94, Perlinger illustrates in Fig. 2 a second portion of the to be attached portion that serves to hold the shape of the second flexible cover, the second to be attached portion would be placed between the shell and outer surface of the backing member 78 as shown in Fig. 5.

As to claim 95, the second flexible cover 71 has a crescent like shape and comprises a main body and a flexible rim attached to the main body.

As to claim 96, Perlinger teaches in an attached state the second flexible cover 20 covering a portion of the lower opening and having a circumferential length. With respect to the limitation of 18-28% and 34-42%, the specification contains no disclosure of either the critical nature of the claimed percentage or any unexpected results arising therefrom, and that as such the 18-28% and 34-42% was arbitrary and therefore obvious. Such percentage limitation cannot be a basis for patentability, since where patentability is said to be based upon diameter or another percentage or another variable in the claim, the applicant must show that the 18-28% and 34-42% is critical. In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934 (Fed. Cir. 1990). One having ordinary skill in the art would be able to determine through routine experimentation the ideal dimension for a particular application.

As to claim 97, Perlinger teaches in an attached state the flexible main body and second flexible cover attached in the lower opening. The flexible main body has a circumferential length. With respect to the limitation of 12-22% and 30-42%, the specification contains no disclosure of either the critical nature of the claimed percentage or any unexpected results arising therefrom, and that as such the 12-22% and 30-42% was arbitrary and therefore obvious. Such percentage limitation cannot be a basis for patentability, since where patentability is said to be based upon diameter or another percentage or another variable in the claim, the applicant must show that the 12-22% and 30-42% is critical. In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934 (Fed. Cir. 1990). One having ordinary skill in the art would be able to determine through routine experimentation the ideal dimension for a particular application.

As to claim 97, Perlinger teaches in an attached state the chin and neck cover members overlapping in some portions and not overlapping at other portions. The portion of the second flexible cover not overlapping the flexible cover has a circumferential length. With respect to the limitation of 9-13% and 10-20%, the specification contains no disclosure of either the critical nature of the claimed percentage or any unexpected results arising therefrom, and that as such the 9-13% and 10-20% was arbitrary and therefore obvious. Such percentage limitation cannot be a basis for patentability, since where patentability is said to be based upon diameter or another percentage or another variable in the claim, the applicant must show that the 9-13% and 10-20% is critical. In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934 (Fed. Cir. 1990). One having ordinary skill in the art would be able to determine through routine experimentation the ideal dimension for a particular application.

As to claim 99, Perlinger teaches in an attached state portion of the opening where the second main body over does not lap the first main body. The portion of the second flexible cover not overlapping the flexible cover has a circumferential length. With respect to the limitation of 8-14%, the specification contains no disclosure of either the critical nature of the claimed percentage or any unexpected results arising therefrom, and that as such the 8-14% was arbitrary and therefore obvious. Such percentage limitation cannot be a basis for patentability, since where patentability is said to be based upon diameter or another percentage or another variable in the claim, the applicant must show that the 8-14% is critical. In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934 (Fed. Cir. 1990). One having ordinary skill in the art would be able to



determine through routine experimentation the ideal dimension for a particular application.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See form PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW W. SUTTON whose telephone number is (571)272-6093. The examiner can normally be reached on Monday - Thursday 6:45-5:15.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary L. Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AWS  
30 September 2009

/Shaun R Hurley/  
Primary Examiner, Art Unit 3765